Supreme Court, U.S.
FILED
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CLERK

No. 02-1211

IN THE

Supreme Court of the United States

ROBERT L. JOSEPH,

Petitioner,

v.

SALT LAKE CITY, UTAH,
CIVIL SERVICE COMMISSION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF UTAH

BRIEF IN OPPOSITION

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Respondent, Salt Lake City Corporation (hereinafter "the City") files this brief in opposition to the Petition for Writ of Certiorari filed by Petitioner, Robert L. Joseph (hereinafter "Joseph").

OPINIONS BELOW

Joseph indicates that the Utah Supreme Court denied his Petition for Writ of Certiorari "to the Utah Court of Appeals." (Petition at p. 2). Joseph purports to reproduce the Utah Supreme Court's Order denying his Petition at App. 1 of the Appendix to the Petition. That reproduction is inaccurate and contains material deviations from the actual Order, to wit: (1) the Petition for Writ of Certiorari was filed on September 20, 2002 not September 23, 2002; and (2) more importantly, the Order denying the Writ was signed by Chief Justice Christine Durham on November 12, 2002 not November 14, 2002. An accurate representation of the Order denying Joseph's Petition for Writ of Certiorari is appended to this Brief as Res. App. 1.

STATEMENT OF JURISDICTION

Joseph's representation in his jurisdictional statement is fatally inaccurate. The Utah Supreme Court's Order denying his Petition for Writ of Certiorari was issued on November 12, 2002 (Res. App. 1) *not* November 14, 2002, as stated by Joseph. Pursuant to 28 U.S.C. § 2101(c), any writ of certiorari shall be "applied for within ninety days after the entry" of the judgment or decree. Rule 13.1 of the Rules of the Supreme Court deems a Petition for Writ of Certiorari to be "timely when it is filed with the Clerk of the Court within 90 days after entry of the judgment."

The Utah Supreme Court issued its Order on November 12, 2002. Ninety (90) days from that date of issuance would have allowed Joseph until February 10, 2003, to file his Petition for Writ of Certiorari with this Court. Joseph, however, misrepresented to this Court that the Order was dated and issued on November 14, 2002 and improperly based his 90 day computation on that misrepresentation.

The Notice of Decision (Res. App. 2), dated November 14, 2002, clearly identifies that the Order was *issued* November 12, 2002. Although Joseph likely used the date of that Notice for purposes of calculating his time, he was incorrect to do so. It is well recognized that when any period of time in the procedural rules is measured from the date of the entry of judgment, rather than from service of a paper on a party, no additional time is allowed for mailing or notice. *See, e.g., Parker v. Board of Pub. Util. of Kansas City*, 77 F.3d 1289, 1291 (10th Cir. 1996); *Halicki v. Louisiana Casino Cruises, Inc.*, 151 F.3d 465, 467-68 (5th Cir. 1998), *cert. denied*, 526 U.S. 1005 (1999).

Having filed his Petition for Writ of Certiorari on February 12, 2002, ninety-two (92) days from the date the Utah Supreme Court issued its Order, Joseph's Petition for Writ of Certiorari to this Court is untimely and fatally flawed. This Court should deny Joseph's Petition for Writ of Certiorari for lack of jurisdiction.

STATEMENT OF THE CASE

Rule 24.2 of the Rules of the Supreme Court of the United States provides that a respondent's brief need not include a concise statement of the case unless the respondent is dissatisfied with the petitioner's presentation of the statement of the case. The Respondent City is dissatisfied with Joseph's statement of the case in large part because Joseph relies on information and documents to support arguments that were never made part of the record before the Civil Service Commission or Court of Appeals. The documents set forth in Joseph's Appendix as App. 14, 15, 16, 17, 18, and 19 to this Court were ordered stricken by the Utah Court of Appeals (Res. App. 3) because those documents were not part of the record before the Civil Service Commission. The taped conversations referenced in footnotes 3 and 4 of Joseph's Petition, likewise, were never part of the record and are referenced for the first time in Joseph's Petition for Writ of Certiorari before this Court. By relying on documents and other matters that were not part of the record to support his statement of the case, Joseph's Petition is improperly presented. Thus, the City presents the following statement of the case:

On March 26, 1999, Joseph, who was a police officer with the Salt Lake City Police Department, pulled over a car driven by Westley Scott for traffic violations. During that stop, Scott attempted to flee and Joseph fired eleven shots, striking Scott once in the face and once in the foot. As a result of that incident, Police Chief Ortega terminated Joseph's employment from the Salt Lake City Police Department on July 16, 1999 for violation of the deadly force policy 3-06-02.01 and for violating policy 3-06-05.02 that prohibits shooting at or from a moving vehicle. Subsequently,

on January 3, 2000, Acting Police Chief A.M. Connole modified that decision, reinstating Joseph but imposing a twenty-day suspension for violating both policies.

Joseph appealed Chief Connole's decision to the Civil Service Commission on January 7, 2000. The Civil Service Commission held an evidentiary hearing on April 11, 2000 and May 8, 2000. On December 6, 2000, the Commission entered its Findings of Fact, Conclusions, and Order[1] affirming Chief Connole's decision that Joseph violated the deadly force policy and violated the policy prohibiting shooting at or from a moving vehicle. Because Joseph stipulated that the twenty-day suspension was not disproportionate to the charge that he violated police policies and only contested Chief Connole's finding that Joseph's actions were in violation of police policies, the Commission also upheld the imposition of the twenty-day suspension.

---

1. Joseph has set forth in his Appendix as App. 9 an earlier version of the Civil Service Commission's Findings of Fact, Conclusions and ORDER dated July 19, 2000, *not* the December 6, 2000 document to which he refers. The December 6, 2000 Civil Service Commission's Findings of Fact, Conclusions and ORDER issued December 6, 2000 is included herein as Res. App. 4.

REASONS FOR DENYING THE PETITION

A. The questions raised by Joseph in his Petition do not raise any significant federal issues that permit this Court to accept jurisdiction.

This Court, with "very rare exceptions," *Yee v. Escondido*, 503 U.S. 519, 533, 112 S. Ct. 1522, 1531, 118 L. Ed. 2d 153 (1992), "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision" this Court has been asked to review. *Adams v. Robertson*, 520 U.S. 83, 86, 117 S. Ct. 1028, 137 L. Ed. 2d 203 (1997). Petitioner Joseph did not raise or present any federal claims or issues to the Utah courts below.

Rule 10 of the Rules of the Supreme Court reflects that a Petition for Writ of Certiorari will only be granted for "compelling reasons." Although Rule 10 lists three categories of consideration, none of the five questions raised by Joseph in his Petition fit within any of those categories. The City respectfully submits that Joseph has failed to present any compelling reasons sufficient to warrant the exercise of this Court's discretion to consider his Petition.

Joseph has also failed to meet his obligations under Rule 14.1(g) of the Rules of the Supreme Court. He must specify when the federal question sought to be reviewed was raised and the manner or method of raising the question so as to show that the federal question was timely and properly raised such that this Court has jurisdiction to review the state court's judgment. The petitioner's burden has been described as the need to demonstrate that the petitioner presented the particular claim being raised in the Petition with

"fair precision and in due time." *Adams*, 520 U.S. at 87, quoting *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67, 495 S. Ct. 61, 63, 73 L. Ed. 184 (1928).

Joseph's Petition should be denied because he has failed to raise any federal questions or present compelling issues as to why his Petition should be granted.

Without waiving the above jurisdictional arguments, the City, nevertheless, presents the following additional reasons for denying Joseph's Petition for Writ of Certiorari.

B. Joseph was not denied due process of law.

Joseph contends that the Commission only has the authority under Utah Code Ann. § 10-3-1012 to "fully hear and determine the matter." Joseph would have this Court believe that the Commission failed to do that. That simply is not so. The Commission fully heard Joseph's appeal, giving him a full, two-day evidentiary hearing where he introduced 38 exhibits and called five witnesses.

It is a misstatement for Joseph to claim to this Court that the only issue of which Joseph had adequate notice was the claim that he violated the deadly force policy. One of the undisputed facts in the case[2] stated: "On July 16, 1999, then Chief Ruben Ortega terminated Joseph's employment with Salt Lake City Corporation, finding that Joseph had used deadly force after any potential threat to him had passed and had violated the policy against firing at or from a moving vehicle." Chief Ortega's letter of July 16, 1999 was introduced at the Civil Service Commission hearing as an

2. Both parties stipulated and agreed to thirty-six undisputed facts and presented those to the Commission at the beginning of the evidentiary hearing.

exhibit, without objection from Joseph's attorney. Chief Connole only modified Chief Ortega's decision. He did not rescind it. Thus, Joseph knew that he had been found to have violated police policy 3-06-02.01 (deadly force) and 3-06-05.02 (firing at or from a moving vehicle).

Joseph alleges that he did not have notice of the reasons for his suspension and was denied an "opportunity to defend the accusations in a timely and meaningful manner." (Petition at p. 10). Again, Joseph misstates the facts. Joseph was represented by counsel throughout the Civil Service Commission appeal. Joseph's attorney presented evidence and witnesses regarding both policies and cross-examined all of the City's witnesses. The fundamental requisite of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Joseph v. Salt Lake City Civil Service Comm.*, 2002 UT App 254, ¶ 10, 53 P.3d 11, 15. Joseph had that opportunity.

Joseph was not denied due process. He simply was unable to present sufficient facts or evidence to convince the Civil Service Commission to reverse the chief's decision to suspend Joseph for twenty days because he violated policies 3-06-02.00 and 3-06-05.02.

C. The Court of Appeal's decision is not in conflict with case law.

Joseph claims that the Court of Appeals' decision is in conflict with the decisions of *Lucas v. Murray City Civil Serv. Comm'n*, 949 P.2d 746 (Utah App. 1997) and *Vetterli v. Civil Serv. Comm'n*, 145 P.2d 792 (Utah 1944). The Memorandum Decision (App. 2) does not conflict with either of those cases. In *Vetterli*, the court addressed the question of whether the

Commission exceeded the scope of its authority when it set aside the chief's order of discharge and substituted instead a six-month suspension. 145 P.2d at 794. In Joseph's case, the Commission did not change Chief Connole's decision. It simply affirmed it. *Vetterli* expressly recognizes the Commission's authority to do just that:

> The civil service commission is made the ultimate authority to determine whether the discharge should or should not stand. To this end the commission is given the authority and duty to "fully hear and determine the matter." Thus, it is to accord a full hearing to the appellant and to the department head as to the truth or falsity of the charges made, and thereupon to determine whether to affirm or to set aside the order made.

145 P.2d at 796.

Similarly, the Court of Appeals' decision does not conflict with its own prior decision in *Lucas*. In *Lucas*, the Court of Appeals set forth the two inquiries that the Civil Service Commission must make in reviewing disciplinary decisions:

> (1) do the facts support the charges made by the department head, and, if so (2) do the charges warrant the sanction imposed?

949 P.2d at 758. In Joseph's case, prior to the beginning of the two-day evidentiary hearing before the Civil Service Commission, Joseph's attorney, on his client's behalf, stipulated that he would not require the City to put forth evidence concerning the proportionality of the penalty. He stipulated that he would focus only on the determination of whether Joseph was in or out of policy. Therefore, there was only one issue

before the Commission, i.e. "do the facts support the charges made by the department head."

As to the first inquiry required of the Commission, the *Lucas* court ruled:

> The Commission's findings, upon which the charges are based, must be supported by substantial evidence viewed in light of the whole record before us. (citation omitted). . . . We do not review the Commission's findings de novo or reweigh the evidence. (citation omitted). Instead, we defer to the Commission's findings on the issues of credibility.

949 P.2d at 758.

In the Memorandum Decision (App. 2), the Court of Appeals' decision makes it abundantly clear that the Commission, indeed, met the standards the court had established in *Lucas*:

> The record clearly shows that the Commission examined all of the evidence placed before it prior to making its determination. Therefore, we conclude that the Commission's decision was well within its discretionary bounds. (App. 5).
>
> After reviewing the record, we conclude that the Commission had ample evidence available to support its findings, including the following facts: (1) Joseph fired at least twice at the vehicle as it was moving away from him and was no longer a threat to either Joseph or any possible bystanders; and (2) Joseph could not clearly see either the car or his surroundings as he was firing his weapon. (App. 4).

D. The Court of Appeals did not err in ruling that Joseph failed to marshal the evidence.

Rule 24(a)(9) of the Utah Rules of Appellate Procedure requires that "a party challenging a fact finding must first marshal all record evidence that supports the challenged finding." This has been defined as a "critical requirement of appellate advocacy." *Moon v. Moon*, 1999 UT App 12 ¶ 24, 973 P.2d 431, 437. The Court of Appeals has described the marshaling process:

> The marshaling process is not unlike becoming the devil's advocate. Counsel must extricate himself or herself from the client's shoes and fully assume the adversary's position. In order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. After constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence. The gravity of this flaw must be sufficient to convince the appellate court that the court's finding resting upon the evidence is clearly erroneous.

Moon, 1999 UT App ¶ 24, *quoting West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991). It is recognized that when an appellant fails to meet the "heavy burden" of marshaling the evidence, the court assumes that the record supports the lower court's findings. *Id.*

The Court of Appeals was correct in finding that Joseph failed to marshal the evidence, noting, "Here, Joseph does nothing more than reargue the evidence he relied upon before the Commission." (App. 3).

E. Joseph did not raise the issues set forth in Questions 3, 4 and 5 of his Petition and should be barred from presenting those questions now.

Joseph did not raise, with either the Civil Service Commission or the Utah Court of Appeals, the issues of corruption or misconduct or whether the City's attorney took unfair advantage of him during the Civil Service Commission hearing. Yet, Joseph attempts to raise those issues as Questions 3, 4 and 5 in his Petition. It is well settled that issues not raised below may not be raised on appeal. *Joseph v. Salt Lake City Civil Service Comm.*, 2002 UT App 254, ¶ 18, 53 P. 3d 11, 16; *State v. Holgate*, 2000 UT 74, ¶ 11, 10 P. 3d 346 ("as a general rule, claims not raised before the trial court may not be raised on appeal").

This Court should not address issues raised for the first time in Joseph's Petition.

MISSTATEMENTS MADE IN JOSEPH'S PETITION

Pursuant to Rule 15.2 of the Rules of the Supreme Court of the United States, the City is compelled to point out the numerous misstatements made by Joseph in his Petition for Writ of Certiorari. In addition to the jurisdictional misstatements identified above, the City has identified several categories under which the misstatements fit.

A. Joseph misstates his case by relying on documents and things that were not part of the record.

The Court of Appeals issued an Order striking numerous documents from Joseph's addendum to his appellant's brief. In doing so, the court stated:

> Petitioner [Joseph] does not dispute that the materials identified by respondents were not a part of the record before the Commission, but contends that the materials may be considered for the first time by this court. Petitioner's contention is without merit. It is well-settled that this court's review is limited to the evidence actually presented to the commission. *See, e.g., Kelly v. Salt Lake City Civil Service Com'n*, 2000 UT App 235, ¶ 15, 8 P. 3d 1048; see also Utah Code § 10-3-1012.5 (1999) (limiting judicial review to the record of the commission).

(Res. App. 3).

Joseph has appended to his Petition a document purporting to be a memorandum from the District Attorney's Office numbered App. 14-15. This document was one of the documents that was stricken by the Court of Appeals. Nevertheless, Joseph attempts to use this document as support for an argument that Joseph's use of deadly force was justified because he acted in self-defense and that each shot was within the standards established by Utah State law. *See* Petition, pp. 1, 4, 12, and 13. All statements made by Joseph that rely upon or use App. 14-15 for support mischaracterize the proceedings below and this Court should not sanction the unfettered submission of documents to this Court that were not part of the record.

Joseph also appends, to his Petition, a newspaper article identified as App. 16-17 to support his opinion that he was suspended because he had revealed allegations of corruption and police misconduct and that the City endeavored to exact revenge upon him for his statements. *See* Petition, pp. 1 and 12. The article identified as App. 15-16 was ordered stricken by the Court of Appeals as it was never presented to the Civil Service Commission. Newspaper articles are the rankest form of hearsay and this Court should reject Joseph's attempt to utilize extraneous and irrelevant material that was never part of the record below.

Joseph includes, with his Petition, two probable cause statements numbered App. 18 and 19 as support for his assertion that the City attempted to exert influence on the Salt Lake County District Attorney, incident to the criminal charges that were brought against Joseph. *See* Petition, p. 4. Both of those statements were stricken by Order of the Court of Appeals because neither of the statements were part of the record on appeal.

By presenting documents to this Court as if they were part of the record below, Joseph is knowingly presenting an inaccurate picture of the proceedings and issues. Supreme Court Rule 14.4 provides that the failure of a petitioner to accurately present essential facts is sufficient reason for this Court to deny the petition. The Court should do so.

B. Joseph never produced the tapes of his conversation(s) with Acting Chief Mac Connole.

At page 5 of his Petition, Joseph refers in footnotes 3 and 4 to taped conversations he allegedly had with Acting Chief Connole. Joseph attempts to utilize those alleged conversations to support his assertion that Chief Connole's decision to suspend Joseph was merely the result of posturing by the City's attorney. Joseph never attempted to produce the purported tapes at any level of the proceedings below and should not be allowed to reference the tapes now. Additionally, Joseph never raised the issue that his suspension was "posturing" by the City's attorney and should not be allowed to raise that issue now.

C. The Civil Service Commission did not uphold the suspension on different grounds than those relied upon by Acting Chief Connole.

Joseph misstates the Civil Service Commission's final Order. Joseph contends throughout his Petition that the Civil Service Commission acted beyond its authority because it drew different conclusions than those of the police chief. The Civil Service Commission did not modify Chief Connole's decision. The Court of Appeals found this same argument meritless: "Finally, the record does not support Joseph's allegation that the Commission allowed the Department to modify Chief Connole's original decision to include a finding of unprofessional conduct." (App. 6).

CONCLUSION

Joseph's Petition for Writ of Certiorari was untimely filed and this Court should deny it for want of jurisdiction. Moreover, Joseph's Petition is nothing more than one more effort to reargue, and even rewrite, the facts of his case. Joseph raises issues in his Petition that were never raised with the Civil Service Commission or the Utah courts and attempts to offer evidence that was previously stricken by court order. Joseph's Petition is replete with misstatements and inaccuracies justifying the Court's rejection thereof.

For these reasons, the City respectfully requests that this Court deny Joseph's Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

RES. APP. 1

IN THE SUPREME COURT OF THE STATE OF UTAH

No. 20020752-SC
20001111-CA

Robert L. Joseph,

Petitioner,

v.

Salt Lake City Civil Service Commission, Salt Lake City Corporation, Salt Lake City Police Department, and the Chief of Police,

Respondents.

ORDER

This matter is before the court upon a Petition for Writ of Certiorari, filed pursuant to rule 48, of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari filed on September 20, 2002, by petition is denied.

FOR THE COURT:

November 12, 2002
Date

/s/ Christine Durham
Christine Durham
Chief Justice

RES. APP. 2

IN THE SUPREME COURT OF THE STATE OF UTAH

No. 20020752-SC
20001111-CA

Robert L. Joseph,

Petitioner,

v.

Salt Lake City Civil Service Commission, Salt Lake City Corporation, Salt Lake City Police Department, and the Chief of Police,

Respondents.

NOTICE OF DECISION

The above-entitled case was submitted to the court for decision and the attached order has been issued.

Order Issued: November 12, 2002

Notice of Decision Issued: November 14, 2002

Record: None

SALT LAKE CITY CIVIL SERVICE

Appendix

/s/ Pat H. Bartholomew
Pat H. Bartholomew
Clerk of Court

By /s/ Ms. Brown
Deputy Clerk

November 14, 2002
Date

RES. APP. 3

IN THE UTAH COURT OF APPEALS

Case No. 20001111-CA

Robert L. Joseph,

Petitioner,

v.

Salt Lake City Civil Service Commission, and
Salt Lake City Corporation, Police Department,

ORDER

This case is before the court on a Motion to Strike Portions of Petitioner's Addendum That Are Not Part of Record. Respondents contend that portions of the addendum to petitioner's brief contain materials that are not a part of the record certified to this court and were not considered by the Commission in its decision.

Petitioner does not dispute that the materials identified by respondents were not a part of the record before the Commission, but contends that the materials may be considered for the first time by this court. Petitioner's contention is without merit. It is well-settled that this court's review is limited to the evidence actually presented to the commission. *See, e.g., Kelly v. Salt Lake City Civil Service Com'n*, 2000 UT App 235, ¶ 15, 8 P.3d 1048; *see also* Utah Code § 10-3-1012.5 (1999) (limiting judicial review to the record of the commission). Based upon the foregoing,

Appendix

IT IS HEREBY ORDERED that the motion to strike is granted in its entirety, and those portions of the addendum specifically enumerated on pages three through, and including, nine of the Memorandum in Support of Motion to Strike Portions of Petitioner's Addendum That Are Not Part of Record are sticken [sic].

DATED this 14th day of August, 2001.

FOR THE COURT:

/s/ Russell W. Bench
Russell W. Bench, Judge

RES. APP. 4

December 6, 2000

ISSUED
Salt Lake Civil Service Commission

IN THE CIVIL SERVICE COMMISSION IN AND FOR SALT LAKE CITY, UTAH

Robert L. Joseph,

Petitioner,

v.

Salt Lake City Corporation,

Respondent

Findings of Fact, Conclusions, and ORDER

On April 11, 2000 and May 8, 2000, this matter came before the Civil Service Commission. Petitioner Robert Joseph ("Joseph") was present and represented by his counsel, J. Bruce Reading. Salt Lake City Corporation was represented by its counsel, Assistant City Attorney Martha S. Stonebrook.

Appendix

FINDINGS OF FACT

1. The incident which gave rise to the disciplinary action taken against Officer Robert Joseph ("Joseph") occurred on March 26, 1999 at approximately 1:00 a.m.

2. The location of the incident was approximately 2300 South 700 East in Salt Lake City, Utah.

3. Joseph was off-duty on that date, working a part-time job.

4. Joseph was wearing his police uniform and was driving a police vehicle.

5. Joseph was called away from his part-time job to meet his wife at 9th South and 7th East.

6. A car driven by Westley Scott ("Scott") passed Joseph going at a high rate of speed.

7. Joseph's wife asked him several times if he was going to follow the car.

8. Initially Joseph declined to follow Scott's car.

9. Eventually, Joseph decided to follow Scott's vehicle.

10. Joseph caught up with Scott's vehicle near 2100 South.

11. Joseph turned on overhead lights at approximately 2200 South.

12. Scott pulled his vehicle to the side of the road but continued to creep forward.

13. Joseph pulled his vehicle in front of Scott's car at an angle.

14. Joseph did not call dispatch when he initiated the traffic stop.

15. When both cars were stopped, Joseph saw Scott waiving his arms around.

16. Joseph exited his vehicle and drew his gun.

17. Joseph approached Scott's car on the driver's side.

18. Joseph was telling Scott to roll down the window and, when Scott did not respond, Joseph opened the driver's side door.

19. Scott put the car into reverse and began backing up.

20. Joseph pulled himself up on the running board of Scott's vehicle.

21. Scott stopped the car suddenly, causing Joseph to fall from the vehicle. Scott then accelerated and fled from the scene.

22. During the incident, Joseph fired eleven rounds, two of which hit Scott (one in the cheek and one in the foot).

23. Joseph fired at least two shots at Scott's vehicle as the vehicle was moving away from him.

24. One eyewitness, John Childress, heard a car accelerating and then heard several shots.

25. Another eyewitness, Darin Bell, looked out his window and saw Joseph standing in a shooting stance, heard some shots but saw no vehicle.

26. Joseph shot at Scott's vehicle despite the fact that his vision was blurred and he was unsure of his target.

27. Scott drove to the home of his girlfriend where he was arrested and taken to St. Marks Hospital.

28. After Scott had left the scene, Joseph called dispatch.

29. Scott's vehicle was impounded on March 26, 1999 and taken to the City impound lot.

30. On March 31, 1999, the car driven by Scott on the night of the incident was released to the owner of the vehicle, who was not involved in the incident.

31. Scott was arrested on March 26, 1999 and booked into the Salt Lake County Jail on charges of aggravated assault on a police officer and felony traffic fleeing.

32. Joseph was placed on administrative leave on March 26, 1999.

33. On March 29, 1999, Joseph was suspended pending the investigation of the incident.

34. Both Internal Affairs and the Homicide Unit of the Salt Lake City Police Department investigated the March 26, 1999 incident.

35. The Salt Lake County District Attorney's Office filed an Information in the Third District Court on April 19, 1999 charging Joseph with aggravated assault on Scott, a second degree felony

36. A Warrant for Joseph's arrest was issued on April 19, 1999 and Joseph was arrested and booked into the Salt Lake County Jail.

37. On July 16, 1999, then Chief Ruben Ortega terminated Joseph's employment with Salt Lake City Corporation, finding that Joseph had used deadly force after any potential threat to him had passed and had violated the policy against firing at or from a moving vehicle.

38. On November 23, 1999, the criminal charge against Joseph was dismissed.

39. On January 3, 2000, Acting Chief of Police A.M. Connole reviewed Joseph's termination and amended the decision, finding Joseph's use of deadly force was not in policy and imposed a twenty day suspension.

40. Joseph was reinstated effective on January 3, 2000 and received his back pay from July 16, 1999 to January 3, 2000, less the twenty days.

41. Joseph stipulated that the 20 day suspension was not disproportionate to the charge that he violated police policies and only contested Chief Connole's finding that Joseph's actions were in violation of police policies.

CONCLUSIONS

1. Joseph engaged in unprofessional conduct that put himself in a position of danger.

2. Joseph used deadly force after all threat to him had passed.

3. Joseph shot at Scott's vehicle as it was moving away from him.

4. Joseph violated Police Policy 3-06-02.00 (Deadly Force).

5. Joseph violated Police Policy 3-06-05.02 (Firing at or from a Moving Vehicle).

Appendix

ORDER

After hearing all of the evidence presented by both sides, and for good cause shown, it is the unanimous decision of the Civil Service Commission to uphold the finding by Chief A.M. Connole that Joseph's actions violated police policies. Because Joseph stipulated that the 20 day suspension was not disproportionate if he was found to be out of policy, the imposition of that discipline is also upheld.

Therefore, it is hereby ordered that the finding that Joseph violated policies 3-06-02.00 and 3-06-05.02 is sustained.

DATED THIS 6th DAY OF DECEMBER, 2000.[1]

BY THE COMMISSION:
/s/ John E. Robertson
Commissioner John E. Robertson
Chairperson of and for
the Civil Service Commission

(NOTARY)

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1. The Commission initially signed its Findings of Fact, Conclusions and Order in this matter on July 19, 2000. Based upon a Memorandum Decision filed by the Utah Court of Appeals on November 16, 2000, in the matter of *Joseph v. Salt Lake City Civil Service Commission, et al*, 2000 UT APP 327, the Commission hereby reissues its Findings of Fact, Conclusions and Order without change, other than the date of the signing, the addition of the date stamp on the front page, and the addition of the mailing certificate.